

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

BERKLEY NATIONAL INSURANCE
COMPANY,

Plaintiff,

V.

XTO ENERGY, INC.,

*Defendant, Counter-Plaintiff and
Third-Party Plaintiff,*

V.

COMMERCE AND INDUSTRY
INSURANCE COMPANY, TORUS
NATIONAL INSURANCE COMPANY
n/k/a STARSTONE NATIONAL
INSURANCE COMPANY, and SENECA
SPECIALTY INSURANCE COMPANY.

Third-Party Defendants.

**DEFENDANT, COUNTER-PLAINTIFF AND THIRD-PARTY PLAINTIFF XTO
ENERGY, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT
AGAINST TORUS NATIONAL INSURANCE COMPANY n/k/a
STARSTONE NATIONAL INSURANCE COMPANY**

Pursuant to Federal Rule of Civil Procedure 56(a), Defendant, Counter-Plaintiff and Third-Party Plaintiff XTO Energy, Inc. (“XTO”), hereby files this Motion for Partial Summary Judgment, and would respectfully show the Court as follows:

WHEREFORE, for all the reasons set forth in XTO's accompanying Memorandum, XTO respectfully requests that this Court grant its Motion and issue an order dismissing StarStone's following affirmative defenses: (1) there is no coverage for the Underlying Claims to the extent XTO and its contractors are not an insured or additional insured under the StarStone Policy (*see*

Doc. No. 32, ¶ 107); (2) there is no additional insured coverage for the Lawsuits for XTO and its contractors arising out of the acts or omissions of Badlands or XTO (*id.*, ¶¶ 109, 117); (3) there is no coverage for the Lawsuits due to the application of the MSA entered into between XTO and Badlands (*id.*, ¶ 116); (4) the pollution exclusions in the Seneca Policy and StarStone Policy bar coverage for the Lawsuit, including because coverage under the StarStone Policy is no broader than would be afforded by the underlying insurance (*id.*, ¶¶ 110-11, 115). XTO also moves for summary judgment that the Texas Oilfield Anti-Indemnity Act does not preclude any recovery by XTO under the StarStone Policy, which StarStone has alleged but not pled.

Dated: April 22, 2020

Respectfully submitted,

/s/ Leslie Thorne

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ATTORNEYS XTO ENERGY, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent to all parties of record pursuant to the ECF guidelines and the Federal Rules of Civil Procedure on this 22nd day of April, 2020.

/s/ Leslie Thorne

Leslie C. Thorne